

ORAL ARGUMENT NOT YET SCHEDULED

No. 24-1120 (and consolidated cases)

**UNITED STATES COURT OF APPEALS
FOR THE D.C. CIRCUIT**

WEST VIRGINIA, et al.,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

On Petitions for Review of a Final Agency Action of the U.S. Environmental
Protection Agency, 89 Fed. Reg. 39,798 (May 9, 2024).

**UNOPPOSED MOTION OF PROFESSOR RACHEL ROTHSCILD
FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF
RESPONDENTS AND OPPOSING MOTIONS FOR STAY PENDING
REVIEW**

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June 11, 2024

Attorneys for Professor Rachel Rothschild

MOTION FOR LEAVE

Pursuant to Federal Rule of Appellate Procedure 29(a)(3) and D.C. Circuit Rule 29(b), Professor Rachel Rothschild respectfully requests leave to file the accompanying amicus curiae brief in opposition to Petitioners' motions for a stay pending review.

Counsel for Professor Rothschild sought the parties' positions on this filing. No party opposes. Specifically:

- The Federal Respondents consent to the filing of an amicus brief.
- The State and Municipal Intervenor-Respondents take no position on this motion.
- The Environmental and Health Intervenor-Respondents consent to the filing of an amicus brief.
- The States of West Virginia, Indiana, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Iowa, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah and Wyoming, and the Commonwealths of Kentucky and Virginia (24-1120) consent to the filing of an amicus brief.
- The States of Ohio and Kansas (24-1121) take no position on this motion.
- National Rural Electric Cooperative Association (24-1122); Oklahoma Gas and Electric Company (24-1126); Electric Generators for a Sensible

Transition (24-1128); NACCO Natural Resources Corporation (24-1153); and Idaho Power Company (24-1155) stated that they would take no position on this motion as long as it and the associated amicus brief are filed on June 11.

- National Mining Association and America's Power (24-1124) take no position on this motion.
- The United Mine Workers of America (24-1142); International Brotherhood of Electrical Workers (24-1143); and International Brotherhood of Boilermakers (24-1144) take no position on this motion.
- The Midwest Ozone Group (24-1146) takes no position on this motion.
- The Edison Electric Institute (24-1152) takes no position on this motion.
- Tennessee Valley Public Power Association takes no position on this motion.

Professor Rothschild, Assistant Professor at the University of Michigan Law School, is a scholar of environmental law, history, and policy. She holds a J.D. from New York University School of Law and a Ph.D. from Yale University's Program in the History of Science and Medicine. Professor Rothschild is the author of the book *Poisonous Skies: Acid Rain and the Globalization of Pollution* (2019), which extensively examines the history of pollution control technologies and their relationship to government regulation of sulfur dioxide—a harmful air pollutant that contributes to the formation of acid rain.

Professor Rothschild's research on the historical development and adoption of pollution-control technology in the coal industry is relevant to the arguments raised in this case. She seeks to participate as amicus to highlight the parallels between industry challenges to EPA's performance standards for sulfur dioxide emissions in the 1970s and the standards challenged here.

In the sulfur dioxide context, for example, industry groups made arguments similar to those presented in this case—namely, that the sulfur dioxide scrubber technology on which the standards were based was not ready to serve as the basis for the challenged standards. The D.C. Circuit properly rejected their arguments, however, and the subsequent widespread adoption scrubber technologies confirmed that EPA's projections were reasonable.

In setting forth this history and connecting it to the scientific and regulatory process that informed EPA's adoption of the standards challenged here, Professor Rothschild's amicus participation will provide relevant context and a critical counterpoint to the pending challenges.

CONCLUSION

For the foregoing reasons, Professor Rachel Rothschild respectfully requests that her motion for leave to participate as amicus curiae be granted.

Respectfully submitted,

/s/ Sommer H. Engels

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CERTIFICATE OF COMPLIANCE

This motion complies with the word limitation of Federal Rule of Appellate Procedure 27(d)(2). The motion contains 546 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f).

This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). The motion has been prepared in proportionally spaced typeface using Microsoft Word and 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2024, a copy of the foregoing document was served on all registered counsel through the D.C. Circuit's CM/ECF system.

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**PROFESSOR RACHEL ROTHSCILD'S CERTIFICATE AS TO
PARTIES, RULINGS, AND RELATED CASES ADDENDUM**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rules 18(a)(4) and 27(a)(4) Professor Rachel Rothschild submits this certificate as to parties, rulings, and related cases.

A. Parties and Amici

Petitioners:

- No. 24-1120: States of West Virginia, Indiana, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Iowa, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming; Commonwealths of Kentucky and Virginia.
- No. 24-1121: States of Ohio and Kansas.
- No. 24-1122: National Rural Electric Cooperative Association.
- No. 24-1124: National Mining Association; America's Power.
- No. 24-1126: Oklahoma Gas and Electric Company.
- No. 24-1128: Electric Generators for a Sensible Transition.
- No. 24-1142: United Mine Workers of America, AFL-CIO.
- No. 24-1143: International Brotherhood of Electrical Workers, AFL-CIO. No. 24-1144: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO.
- No. 24-1146: Midwest Ozone Group.

- No. 24-1152: Edison Electric Institute.
- No. 24-1153: NACCO Natural Resources Corporation.
- No. 24-1155: Idaho Power Company

Intervenor-Petitioners

- Tennessee Valley Public Power Association (movant)
- Louisiana Public Service Commission (movant)

Respondent

- U.S. Environmental Protection Agency and Michael S. Regan,
Administrator, United States Environmental Protection Agency (in Nos. 24-1120, 24-1121, 24-1122, 24-1124, 24-1126, 24-1146, 24-1153, 24-1155)
and the U.S. Environmental Protection Agency (in Nos. 24-1128, 24-1142, 24-1143, 24-1144, 24-1152).

Intervenor-Respondents

- American Lung Association; Clean Air Council; American Public Health Association; Clean Wisconsin; Natural Resources Defense Council
- States of New York, Arizona, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin; Commonwealths of Massachusetts and Pennsylvania

- Cities of Boulder, Chicago, and New York; City and County of Denver; the District of Columbia; California Air Resources Board
- Edison Electric Institute

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- Chamber of Commerce of the United States of America (movant, in support of Petitioners)
- Sierra Club and Environmental Defense Fund (movants, in support of Respondents)
- Professor Rachel Rothschild (movant, in support of Respondents)

B. Rulings Under Review

These consolidated cases challenge EPA’s action titled “New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule,” published at 89 Fed. Reg. 39,798 (May 9, 2024).

C. Related Cases

Thirteen consolidated cases (Case Nos. 24-1120, 24-1121, 24-1122, 24-1124, 24-1126, 24-1128, 24-1142, 24-1143, 24-1144, 24-1146, 24-1152, 24-1153, 21-

1155) seek review of the agency action challenged here. Undersigned counsel is unaware of any other related cases.

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